



OLR RESEARCH REPORT

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INHERITANCE RIGHTS OF POSTHUMOUSLY CONCEIVED CHILDREN IN OTHER STATES

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You asked for a survey of laws in other states authorizing intestate succession rights of posthumously conceived children.

SUMMARY

We found seven states that provide intestacy succession rights to posthumously conceived children: California, Colorado, Iowa, Louisiana, North Dakota, Texas, and Virginia. Each state imposes different requirements for the child to qualify for intestate succession. For example, some require written authorization from the parent authorizing posthumous use of the genetic material (California, Iowa, and Texas). And all but two of these states, Texas and Virginia, limit intestacy rights to children in gestation at the time of the parent's death or born during a certain period after the parent's death.

Connecticut, like a number of other states, does not specifically prohibit or grant intestacy succession rights to posthumously conceived children (see [OLR Report 2012-R-0240](#)).

STATES PROVIDING INTESTACY SUCCESSION RIGHTS

Some states, including California, Colorado, Iowa, Louisiana, North Dakota, Texas, and Virginia, provide intestacy succession rights to posthumously conceived children under certain circumstances.

California

A posthumously conceived child in California must meet the following conditions in order to be eligible for any of the deceased parent's property.

1. The parent, in a signed and dated writing, must specify that his or her genetic material be used for the child's posthumous conception (the specification may be revoked or amended only by a writing signed and dated by the parent) and designate someone to control the genetic material's use.
2. The designated person must give written notice by certified mail that the genetic material is available for posthumous conception to someone with the power to control the distribution of the decedent's property or death benefits. The notice must be received within four months (a) after the parent's death certificate is issued or (b) a judgment determining the fact of the decedent's death is entered, whichever occurred first.
3. The child must be in utero (a) through the use of the parent's genetic material and (b) within two years after the parent's death certificate is issued or a judgment of death is entered, whichever is first.
(Cal. Prob. Code § 249.5).

Colorado

Under Colorado law, a child in gestation when his or her parent dies is considered to be alive at the time of the father's death and eligible for intestate succession (Colo. Rev. Stat. § 15-11-104). The law also treats a child conceived posthumously as if the child was in gestation at the time of the parent's death (Colo. Rev. Stat. § 15-11-120(11)).

Iowa

Under Iowa law, a child conceived posthumously is treated as the deceased parent's child for the purpose of intestate succession if:

1. a genetic relationship between the parent and child is established;
2. the parent, in a signed writing, authorized the surviving spouse to use his or her genetic material to posthumously conceive a child; and
3. the child is born within two years of the parent's death (Iowa Code § 633.220A).

Louisiana

Under Louisiana law, a child conceived posthumously is eligible for intestate succession rights if he or she was born to the deceased parent's surviving spouse within three years after the parent's death. Any heir whose interest would be reduced by the child's inclusion has up to one year from the child's birth to challenge his or her paternity (La. Rev. Stat. Ann. § 391.1).

North Dakota

Under North Dakota law, a child in gestation when his or her parent dies is considered to be living at the time of the parent's death for the purpose of intestate succession (ND Cent. Code § 30.1-04-04). A child conceived posthumously is treated as though in gestation at the time of the parent's death if he or she was (1) in utero up to 36 months after the parent's death or (2) born up to 45 months after the parent's death (ND Cent. Code § 30.1-04-19(11)).

Texas

Under Texas law, a posthumously conceived child is eligible for intestate succession rights if the deceased parent consented in writing that if assisted reproduction were to occur after death, he or she would be the resulting child's parent (Tex. Fam. Code Ann. § 160.707).

Virginia

Virginia law allows intestate succession rights for posthumously conceived children if the:

1. embryo is implanted in utero before notice of death can reasonably be communicated to the physician performing the procedure, or
2. decedent had consented to be a parent in writing before the implantation (Va. Code Ann. § 20-158(B)).

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